

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Petitions Concerning Eligible	)	
Telecommunications Carrier Designations	)	
and the Lifeline and Link-Up Universal	)	
Service Support Mechanism	)	
	)	

**REPLY COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply comments in response to comments which were filed on or about September 20, 2004 in response to a request by the Wireline Competition Bureau for comment on various filings concerning eligible telecommunications carrier (“ETC”) designations and the Lifeline and Link-Up universal service mechanism.<sup>1</sup> Commenters addressed both a petition for reconsideration filed by AT&T Corporation (“AT&T”) in which AT&T asks the Commission to modify its rules governing certification as an ETC to receive low income support from the federal Universal Service Fund (“USF”),<sup>2</sup> and TracFone’s amendments to its petitions for ETC designation in

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<sup>1</sup> See Public Notice – The Wireline Competition Bureau Seeks Comment on Petitions Concerning Eligible Telecommunications Designations and the Lifeline and Link-Up Universal Service Support Mechanism, CC Docket No. 96-45 and WC Docket No. 03-109, DA 04-2750, released August 30, 2004.

<sup>2</sup> See AT&T Corp. Petition for Limited Reconsideration, WC Docket No. 03-109, filed July 21, 2004) (“AT&T Petition”).

which TracFone has limited its petitions to request only low income support from the USF.<sup>3</sup> TracFone's reply comments solely focus on comments related to TracFone's decision to utilize its ETC status only to provide Lifeline service to qualified low income consumers. TracFone takes no position on AT&T's request that the Commission should amend its rules to provide for separate ETC certification for high cost support and for Lifeline. None of the comments alter the conclusion that the restricted scope of TracFone's ETC petitions is consistent with the applicable laws and regulations governing universal service and with the public interest.

Comments opposing TracFone's decision to use its ETC status to only seek disbursements from the USF low income program demonstrate a failure to comprehend TracFone's position and the regulations governing the low income and high cost USF mechanisms. As TracFone explained in its initial comments, TracFone's decision to seek only disbursements from the USF to support its proposed Lifeline program is lawful and consistent with current Commission rules, and therefore, does not require any revisions to the Commission's rules.<sup>4</sup> TDS Telecommunications Corp. ("TDS Telecom") and Verizon inaccurately characterize TracFone's petitions, as amended, as requesting a change in the ETC designation process.<sup>5</sup> TDS Telecom inaccurately states that TracFone believes its ETC petitions should be subject to a different public analysis standard than petitions seeking ETC designation

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<sup>3</sup> See TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45, filed Aug. 16, 2004; TracFone Wireless, Inc. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, filed Aug. 16, 2004.

<sup>4</sup> Comments of TracFone, at 2-3; see Comments of the Oklahoma Rural Telephone Companies ("ORTC"), at 2-3.

<sup>5</sup> See Comments of TDS Telecom, at 7; Comments of Verizon, at 6. TDS Telecom and Verizon acknowledge that the Lifeline program is underutilized by eligible consumers.

for both low income and high cost support.<sup>6</sup> The Rural Iowa Independent Telephone Association (“RIITA”) also wrongly implies that TracFone does not intend to meet the ETC qualification criteria.<sup>7</sup> TracFone’s ETC petitions, as amended, demonstrate that TracFone intends to, and does, meet all requirements to be designated as an ETC (except for the “facilities-based requirement of Section 214(e) for which it has petitioned for forbearance).

TracFone’s decision to limit its request for disbursements from the USF to Lifeline support is consistent with statutes and regulations concerning the designation of ETCs and would promote the public interest in making affordable wireless telecommunications service available to all Americans, including low income consumers. Verizon incorrectly asserts that allowing TracFone to only request low income support from the USF “would mean that customers soon might have to face the choice of receiving Lifeline support from one carrier, or high cost support from another, but not both supported services from one ETC.”<sup>8</sup> Verizon’s concern is not justified. First, as an ETC, TracFone would be required to provide all services listed in Section 54.101 of the Commission’s Rules (47 C.F.R. § 54.101) throughout its designated area, including all high cost areas, even if TracFone determined that it would not seek high cost support from the USF. Second, while eligible customers can choose to receive services supported by the low income universal service program, customers have no choice regarding whether they receive services supported by the high cost program. Therefore, customers will not be faced with the choice posited by Verizon. Verizon also stated a concern with customers being able to receive Lifeline service for more than one line. TracFone will ensure that customers only receive

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<sup>6</sup> Comments of TDS Telecom, at 3 & n.8.

<sup>7</sup> Comments of RIITA, at 2; see also Comments of United States Telecom Association (“USTA”), at 6.

<sup>8</sup> Comments of Verizon, at 3-4.

Lifeline service for one line by requiring them to certify in writing, at the time of purchasing TracFone's service, that they are not receiving Lifeline service from any other carrier.

Moreover, TracFone's Lifeline proposal complies with Commission regulations governing the universal service low income support program. TracFone does not plan to offer LinkUp services to customers because such services are unnecessary. LinkUp support reimburses local service providers for providing discounted home telephone service connections. TracFone does not charge customers for service connections, and therefore, there is no need to offer LinkUp services supported by the Universal Service Fund. The statement by the National Association of State Utility Consumer Advocates ("NASUCA") that LinkUp support should apply to TracFone customers' purchase of cellular phones does not change TracFone's position that it is not required to offer LinkUp services.<sup>9</sup> The LinkUp program pays eligible consumers a portion of the installation or activation fee for wireline or wireless service, but does not apply to handsets.<sup>10</sup>

NASUCA's concern that TracFone's Lifeline service proposal would be less affordable than "plain old telephone service of the ILEC" is irrelevant to whether TracFone's proposal would promote the public interest.<sup>11</sup> This concern ignores the fact that wireless service offers unique advantages to low income consumers, such as mobility, security, and convenience, that are not available from traditional wireline service.<sup>12</sup> Moreover, as effectively explained by the League of United Latin American Citizens ("LULAC") in its comments, for some consumers,

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<sup>9</sup> See Comments of NASUCA, at 8.

<sup>10</sup> See Get Connected: Afford-A-Phone, A Lifeline Assistance and Link-Up America Outreach Program, *available at* [www.fcc.gov/cgb/getconnected/faqs.html](http://www.fcc.gov/cgb/getconnected/faqs.html).

<sup>11</sup> See Comments of NASUCA, at 7-8.

<sup>12</sup> See Comments of American Foundation for the Blind ("AFB") (access to wireless service is "a vital foundation for public safety and full participation in society").

pre-paid wireless phone service, like that offered by TracFone, is the lowest cost alternative for obtaining wireless service. LULAC notes that although per minute charges may be higher for pre-paid service than for post-paid service, consumers utilizing pre-paid wireless service “can pay much less per month than they would, if locked into an annual contract with a set monthly charge.”<sup>13</sup> Moreover, pre-paid wireless service allows consumers to more easily stay within a budget, since there is no potential for such consumers to incur late payment charges or additional charges for making calls beyond the calling minutes allotted per month.<sup>14</sup>

ORTC’s suggestion that it is premature for the Commission to consider TracFone’s petitions because the Commission is conducting a proceeding that could affect the designation of ETCs and has not yet established a minimum standards for ETC offerings is unjustified and ignores the reality of conducting business in a regulated industry. Carriers subject to regulation by the Commission are continuously impacted by Commission decisions that interpret or amend the Commission’s rules or establish new rules. The Commission may not cease applying current rules to carriers simply because there is a proceeding that may result in changes to those rules. Neither should it defer action on matters that are governed by existing rules simply because those rules may be subject to possible revision in a rulemaking proceeding. In the context of several ETC designation orders, the Commission has noted that the Federal-State Joint Board is reviewing the Commission’s rules concerning the USF, including the process for designating ETCs.<sup>15</sup> The Commission has acknowledged that the outcome of that proceeding could

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<sup>13</sup> Comments of LULAC, at 3 (emphasis in original).

<sup>14</sup> See id. at 4.

<sup>15</sup> See Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 19 FCC Rcd 6422, ¶¶ 3-4 (2004); Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, 17 FCC Rcd 9596, ¶¶ 3-4 (2004).

potentially impact the criteria used for continued eligibility to receive universal service support. Wisely, the Commission acted on those requests notwithstanding the pendency of a proceeding which could result in future rule changes. Rather, the Commission decided to impose a more stringent public interest analysis for ETC designations in rural areas pending further action by the Commission. However, the Commission continues to consider petitions for ETC designation and issue substantive orders regarding those petitions.<sup>16</sup> Accordingly, it is appropriate for the Commission to consider TracFone's ETC petitions, as amended to seek only low income support as well as its petition for forbearance.

TDS Telecom asserts that allowing ETCs to provide Lifeline services, but not also requiring them to seek support from the high cost program, would place an additional burden on the USF and would be administratively complex. TDS Telecom suggests that the Commission refrain from granting wireless carriers' ETC petitions until it adopts measures to control the size of the USF.<sup>17</sup> As detailed above, the Commission continues to review and determine ETC petitions, including petitions filed by wireless carriers, even though rules governing such petitions are currently being considered for revision. Similarly, the fact that the Commission could adopt measures to control the size of the USF does not justify the Commission to cease consideration of ETC Petitions. In addition, the possibility that an ETC seeking support only from the low income program would pose additional administrative burdens on the USF does not warrant a conclusion that no other carriers may be designated as ETCs. Moreover, TDS Telecom's concern with the size of the USF if ETCs only sought support from the Lifeline is

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<sup>16</sup> See id.; see also ALLTEL Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the state of Florida, et al., DA 04-3046 (released Sept. 24, 2004).

<sup>17</sup> See Comments of TDS Telecom, at 5-8.

unfounded. The impact on the USF by carriers only seeking low income support is relatively less than the impact caused by carriers who seek both low income and high cost support.<sup>18</sup>

Several commenters contend that TracFone, as a pure reseller, should not be allowed to have ETC status.<sup>19</sup> Whether TracFone should be permitted to be designated as an ETC given that it does not provide facilities-based services is the subject of TracFone's Petition for Forbearance, filed on June 8, 2004. Verizon and USTA contend that resellers with ETC status will receive a double recovery of universal service support: support incorporated into the wholesale price of resold services and direct support resellers would receive as a result of their status as an ETC. This issue is outside the scope of this proceeding. Nevertheless, as TracFone explained in its Petition for Forbearance, Verizon's and USTA's analysis does not apply to the resale of CMRS service because underlying CMRS carriers, unlike incumbent local exchange carriers, are under no obligation to provide their services to resellers at wholesale rates or to pass through universal service support to resellers.<sup>20</sup> TracFone addressed each component of the standard for forbearance codified at Section 10(c) of the Communications Act, and will not reiterate its demonstration of compliance with Section 10(c) in these reply comments.<sup>21</sup> However, it is clear that TracFone meets each of the forbearance criteria codified at Section 10 of the Act.

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<sup>18</sup> TDS Telecom and Verizon's objections that TracFone's Lifeline proposal would increase the size of the USF are misplaced. As explained in its amended petitions, TracFone has limited its ETC proposal to Lifeline support in an effort to ameliorate the impact on the fund. TracFone shares those carriers' concerns about avoiding unrestrained growth of the USF.

<sup>19</sup> See Comments of RIITA, at 2; Comments of USTA ("USTA"), at 4-6; Comments of Verizon, at 4-6;

<sup>20</sup> See TracFone's Petition for Forbearance, CC Docket 96-45, filed June 8, 2004, at 9-10.

<sup>21</sup> 47 U.S.C. § 160(c); see TracFone's Petition for Forbearance, at 5-10.

Finally, TracFone agrees with several commenters who support the designation of wireless providers and resellers as ETCs and commend the benefits of prepaid services.<sup>22</sup> As stated by NCAI:

Lifeline was created to ensure that all Americans would have access to telecommunications services. To fully achieve that goal in the twenty-first century, low-income people should have access to competitive wireless services of all kinds, including the prepaid wireless services described in the Tracfone petition. Prepaid services in particular hold promise for low income people because there are no long term contracts that may be difficult to honor, no additional charges for late payment and very often, as set out in the Tracfone petition, provide additional services like voice mail and long distance at no additional charge.”<sup>23</sup>

TracFone also concurs with the view of commenters that the public interest will be served by an expansion of the range of service providers who are eligible to receive Lifeline support to include wireless resellers such as TracFone. Increased competition for consumers eligible to receive Lifeline services will spur carriers to provide diverse service offerings and better service and to ensure that qualified consumers are aware of their services.<sup>24</sup> Thus, increasing the universe of carriers who provide Lifeline services “will bring the same choices and consumer benefits to low-income people that are available to all other Americans, and would play an essential role in lowering costs to low income consumers and increase participation of eligible Americans in the Lifeline Program.”<sup>25</sup>

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<sup>22</sup> See Comments of AFB; Comments of American Association of People with Disabilities and Self Help for the Hard of Hearing (“AAPD/SHHH”); Comments of LULAC; Comments of National Congress of American Indians (“NCAI”); and Comments of Telecommunications for the Deaf, Inc. (“TDI”).

<sup>23</sup> Comments of NCAI, at 3-4; see Comments of TDI, at 4; Comments of AAPD/SHHH, at 4.

<sup>24</sup> See Comments of LULAC, at 5; Comments of NCAI, at 4.

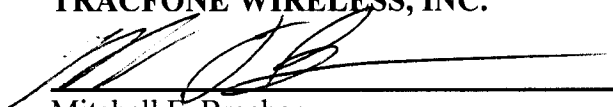
<sup>25</sup> Comments of NCAI, at 4.

## CONCLUSION

For the reasons stated in these reply comments, TracFone's ETC petitions, as amended, do not request the Commission to revise its rules concerning ETC certification. TracFone's decision to limit the scope of its ETC petitions is consistent with the laws and regulations applicable to universal service and would serve the public interest. Accordingly, the rule changes sought by AT&T are not necessary in order for the Commission to grant and appropriately condition TracFone's petitions for ETC designation so that it can offer Lifeline service to qualified low income consumers.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**

A handwritten signature in black ink, appearing to read 'M. Brecher', is written over a horizontal line.

Mitchell F. Brecher

Debra McGuire Mercer

GREENBERG TRAURIG, LLP  
800 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20006  
(202) 331-3100

*Its Counsel*

October 4, 2004

## **CERTIFICATE OF SERVICE**

I, Michelle D. Diedrick, an Executive Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on October 4, 2004, a copy of the foregoing Reply Comments of TracFone Wireless, Inc. was filed electronically with the following:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
c/o Natek, Inc.  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

Sheryl Todd  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Thomas Buckley  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Jeffrey Carlisle, Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Anita Cheng  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

John Muleta, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

### **And served by first class United States mail, postage prepaid, on the following:**

Brent Wilkes  
Executive Director  
League of United Latin  
American Citizens  
2000 L Street, NW  
Washington, D.C. 20036

Ann H. Rakestraw  
Edward Shakin  
Verizon  
1515 North Court House Road  
Suite 500  
Arlington, VA 22201

Andrew J. Imparato  
President and CEO  
American Association of  
People with Disabilities  
1629 K Street, NW  
Suite 503  
Washington, D.C. 20006

Claude L. Stout  
Executive Director  
Telecommunications for the Deaf, Inc  
8630 Fenton Street  
Suite 604  
Silver Spring, MD 29010

Brenda Battat  
Senior Director of Public Policy  
and Development  
Self Help for Hard of Hearing People  
7910 Woodmont Avenue  
Suite 1200  
Bethesda, MD 20814

Mary Newcomer Williams  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2401  
*Attorney for TDS Telecom*

Alan M. Dinsmore, Acting Director  
Governmental Relations Department  
American Foundation for the Blind  
820 First Street, NE  
Suite 400  
Washington, D.C. 20002

NASUCA  
8380 Colesville Road  
Suite 101  
Silver Spring, MD 20910

Thomas G. Fisher, Jr.  
Attorney at Law  
Post Office Box 12277  
Des Moines, IA 50312


L. Marie Guillory  
Daniel Mitchell  
National Telecommunications  
Cooperative Association  
4121 Wilson Boulevard  
10th Floor  
Arlington, VA 22203

Janine L. Migden-Ostrander  
David C. Bergmann  
Terry L. Etter  
Ohio Consumers' Counsel  
10 West Broad Street  
Suite 1800  
Columbus, OH 43215-3485

Stephen Ward, Public Advocate  
Wayne Jortner, Senior Counsel  
112 State House Station  
Augusta, ME 04333

Mary Kathryn Kunc  
Ron Comingdeer  
Kendall W. Parrish  
Comingdeer, Lee & Gooch  
6011 North Robinson  
Oklahoma City, OK 73118

James W. Olson  
Indra Sehdev Chalk  
Michael T. McMenamin  
Robin E. Tuttle  
United States Telecom Association  
1401 H Street, NW  
Suite 600  
Washington, D.C. 20005

  
Michelle D. Diedrick